

STEPHEN P. STUBBS, ESQ.  
Nevada Bar No.: 0010449  
STEPHEN P. STUBBS, ATTORNEY AT LAW  
626 South Third Street  
Las Vegas, Nevada 89101  
Telephone: (702) 493-1040  
Facsimile: (702) 293-3289  
stephen@stephenpstubbs.com

Jared Richards, Esq.  
Nevada Bar No. 11254  
CLEAR COUNSEL LAW GROUP  
1671 W. Horizon Ridge Pkwy, Ste 200  
Henderson, Nevada 89102  
Telephone No.: (702) 476-5900  
Facsimile No.: (702) 924-0709  
jared@clearcounsel.com

*Attorneys for Plaintiff*

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

KELLY PATTERSON, individually

Plaintiff,

vs.

OFFICER RICHARD FONBUENA,  
BADGE NO. 6834, of the Las Vegas  
Metropolitan Police Department, and DOE  
Officers I - XX,

Defendants.

CASE NO.: 2:18-cv-00518-JCM-GWF

**FIRST AMENDED COMPLAINT**

**Jury Demand Included**

COMES NOW, Plaintiff, Kelly Patterson, by and through his attorneys of record, Stephen P. Stubbs, Esq. of Stephen P. Stubbs, Attorney at Law and Jared R. Richards, Esq. of Clear Counsel Law Group, and hereby complains against Defendant, Officer Richard Fonbuena, Badge No. 6834, of the Las Vegas Metropolitan Police Department, as follows:

**I. INTRODUCTION**

1. This is a civil rights action brought by Kelly Patterson against Officer Richard Fonbuena, Badge No. 6834 of the Las Vegas Metropolitan Police Department for violations of Mr.

1 Patterson's rights guaranteed by the United States Constitution while he lawfully filmed the arrest  
2 of another individual by Metro officers.

3 2. Plaintiff, Kelly Patterson, brings this action to seek relief for Defendants' violation  
4 of Mr. Patterson's rights protected by 42 U.S.C. § 1983 and by the First, Fourth, Fifth and  
5 Fourteenth Amendments of the United States Constitution and the Constitution of the State of  
6 Nevada Section 8, 9, 10, and 18 and the common law of the State of Nevada.

## 7 **II. PARTIES**

8 3. At all times herein mentioned, Plaintiff, Kelly Patterson, is and was a resident of  
9 Clark County, Nevada.

10 4. At all times herein mentioned, Defendant Officer Richard Fonbuena, Badge No.  
11 6834 of the Las Vegas Metropolitan Police Department ("Officer Fonbuena") is and was a resident  
12 of Clark County, Nevada.

13 5. Defendant DOE Officers are officers of the Las Vegas Metropolitan Police  
14 Department acting under color of law and will be specifically identified once their identities are  
15 known to Plaintiff.

## 16 **III. JURISDICTION**

17 6. This Court has jurisdiction over this cause of action because all actions giving rise  
18 to it occurred in Clark County, Nevada, all parties are domiciled in Clark County, Nevada and  
19 Plaintiff is seeking damages in excess of \$15,000.00.

## 20 **IV. VENUE**

21 7. This Court is an appropriate venue in this matter under because the actions giving  
22 rise to this action occurred in this Court's judicial district and all evidence and records relevant to  
23 the allegations are maintained in this judicial district.

## 24 **V. STATEMENT OF FACTS**

25 8. Plaintiff is a citizen activist and a police accountability journalist who focuses on  
26 stories that inform the public about police misconduct. He engages in activities protected by the  
27 First Amendment of the United States Constitution and Section 9 of the Constitution of the State  
28

1 of Nevada to monitor, report, inform the public and thus deter police misconduct. As part of an  
2 essential element of our society, he is one of the voices that informs the public of governmental  
3 abuses manifested through the police force.

4 9. On November 4, 2016, Mr. Patterson was walking in Downtown Las Vegas when  
5 he observed a group of police officers near an African American woman. When one officer  
6 physically reached out towards the African American woman, she recoiled and shouted, "Don't  
7 touch me". Immediately, that officer and two other officers surrounded and restrained the African  
8 American woman, putting her under arrest.

9 10. While standing a reasonable and safe distance away, Mr. Patterson used a portable  
10 video recording device to record the event. This reasonable and safe distance ensured that Mr.  
11 Patterson was in no way interfering with the police activities.

12 11. Officer Fonbuena noticed that Mr. Patterson was recording the arrest.

13 12. Mr. Patterson's recording of the arrest was open and obvious.

14 13. In an attempt to prevent Mr. Patterson from exercising his well-established right to  
15 record public police activity, Officer Fonbuena gave Mr. Patterson an illegal command to "move  
16 on" and began to approach Mr. Patterson.

17 14. The party accompanying Mr. Patterson asked Officer Fonbuena why Mr. Patterson  
18 was not allowed to record the event.

19 15. The Officer Fonbuena then intentionally stood in front of the camera to block the  
20 recording of the arrest.

21 16. Officer Fonbuena asked Mr. Patterson, "Do you want to go to jail?", and again gave  
22 Mr. Patterson the illegal command to "move on".

23 17. During this conversation, it was objectively clear and subjectively clear to Officer  
24 Fonbuena that Mr. Patterson was in no way impeding or obstructing the arrest or investigation, that  
25 Mr. Patterson was a reasonable and safe distance away from the arrest and that Mr. Patterson was  
26 documenting the arrest with a camera.

1           18.     During this conversation, various members of the public were in closer proximity to  
2 the arrest of the African American woman than was Mr. Patterson. No officer objected to the  
3 presence of any of these closer-in-proximity citizens who were not filming.

4           19.     Officer Fonbuena, without legally justifiable cause, arrested Mr. Patterson for  
5 “obstruction” when it was objectively clear and subjectively clear to Officer Fonbuena that Mr.  
6 Patterson was not obstructing justice and that Mr. Patterson was exercising his constitutional right  
7 to be on the sidewalk and record.

8           20.     Officer Fonbuena arrested Mr. Patterson because Mr. Patterson was recording the  
9 arrest of the African American woman and refused to stop recording the arrest.

10          21.     During the arrest, Officer Fonbuena physically injured Mr. Patterson.

11          22.     Mr. Patterson is seeking damages in excess of \$15,000.00.

## 12                               **VI.     CAUSES OF ACTION**

### 13                               **FIRST CLAIM FOR RELIEF**

#### 14                               **42 U.S.C. § 1983 and First and Fourteenth Amendments** 15                               **Against Officer Fonbuena**

16          23.     Plaintiff repeats and realleges by reference all prior paragraphs as if fully set forth  
17 herein.

18          24.     The conduct of Officer Fonbuena, described herein, while acting under color of state  
19 law, denied Mr. Patterson his rights to freedom of speech, assembly, and association guaranteed  
20 under the First and Fourteenth Amendments. Officer Fonbuena is therefore liable under 42 U.S.C.  
21 § 1983 which prohibits the deprivation under color of state law, of any rights, privileges or  
22 immunities guaranteed by the United States Constitution.

23          25.     Officer Fonbuena violated Plaintiff’s First Amendment right to assembly, speech  
24 and association by unlawfully denying Plaintiff’s right to lawfully assemble in a public forum and  
25 curtailing and ultimately terminating his lawful assembly, subjecting him to false arrest and illegal  
26 excessive force, submitting false charges to the district attorney to deter Plaintiff from exercising  
27 his constitutional rights, and interfering with and violently ceasing his lawful and Constitutionally  
28

1 protected activity of observing and documenting police conduct in a public forum. Officer  
2 Fonbuena interfered with and chilled Plaintiff's exercise of free speech.

3 26. Officer Fonbuena's actions were done in retaliation for Plaintiff exercising his First  
4 Amendment rights and intentionally acted out of a bias against the content of Plaintiff's speech.

5 27. As a result of Officer Fonbuena's unlawful action, Plaintiff has suffered violation  
6 of his First and Fourteenth Amendment rights to free speech, assembly and association.

7 28. As a direct and proximate result of the Officer Fonbuena's unlawful conduct,  
8 Plaintiff has suffered physical, mental and emotional injury, and mental anguish, suffering,  
9 humiliation, embarrassment and deprivation of his Constitutional rights.

10 29. Plaintiff has suffered damages in excess of \$15,000.00.

11 30. Plaintiff has been required to retain the services of attorneys to prosecute this action  
12 and is entitled to reasonable attorney fees and costs.

13 **SECOND CLAIM FOR RELIEF**

14 **42 U.S.C. § 1983 and Fourth and Fourteenth Amendments**  
15 **Against Officer Fonbuena**

16 31. Plaintiff repeats and realleges by reference all prior paragraphs as if fully set forth  
17 herein.

18 32. The conduct of Officer Fonbuena, described herein, while acting under color of state  
19 law, violated Mr. Patterson's right to be free from unreasonable search and seizure and arrest  
20 without reasonable suspicion or probable cause as required by the Fourth and Fourteenth  
21 Amendments. Officer Fonbuena is therefore liable under 42 U.S.C. § 1983 which prohibits the  
22 deprivation under color of state law, of any rights, privileges or immunities guaranteed by the  
23 United States Constitution.

24 33. As a direct and proximate result of Officer Fonbuena's unlawful conduct, Plaintiff  
25 has suffered physical, mental and emotional injury and mental anguish, suffering, humiliation,  
26 embarrassment and a deprivation of Constitutional rights.

27 34. Plaintiff has suffered damages in excess of \$15,000.00.

**42 U.S.C. § 1983 and Fourth and Fourteenth Amendments  
Against Officer Fonbuena**

37. The conduct of Officer Fonbuena, as described herein, while acting under color of state law, violated Mr. Patterson's right to be free from excessive force pursuant to the Fourth and Fourteenth Amendments. Officer Fonbuena is therefore liable under 42 U.S.C. § 1983 which prohibits the deprivation under color of state law, of any rights, privileges or immunities secured by the United States Constitution.

38. As a direct and proximate result of Officer Fonbuena's unlawful conduct, Plaintiff has suffered physical, mental and emotional injury and mental anguish, suffering, humiliation, embarrassment and a deprivation of Constitutional rights.

39. Plaintiff has suffered damages in excess of \$15,000.00.

40. Plaintiff has been required to retain the services of attorneys to prosecute this action and is entitled to reasonable attorney fees and costs.

**42 U.S.C. § 1983 and Fifth and Fourteenth Amendments  
Against Officer Fonbuena**

41. Plaintiff repeats and realleges by reference all prior paragraphs as if fully set forth herein.

42. The conduct of Officer Fonbuena, as described herein, while acting under color of state law, denied Mr. Patterson of his right to be free from any deprivation of liberty without due process of law under the Fifth and Fourteenth Amendments. Officer Fonbuena is therefore liable

1 under 42 U.S.C. § 1983 which prohibits the deprivation under color of state law, of any rights,  
2 privileges or immunities secured by the United States Constitution.

3 43. As a direct and proximate result of Officer Fonbuena's unlawful conduct, Plaintiff  
4 has suffered, physical, mental and emotional injury and mental anguish, suffering, humiliation,  
5 embarrassment and deprivation of Constitutional rights.

6 44. Plaintiff has suffered damages in excess of \$15,000.00.

7 45. Plaintiff has been required to retain the services of attorneys to prosecute this action  
8 and is entitled to reasonable attorney fees and costs.

9 **PRAYER FOR RELIEF**

10 Plaintiff prays for judgment against Defendants, jointly and severally, as follows:

11 a. A declaration that Defendants' conduct violated the First, Fourth, Fifth, and  
12 Fourteenth Amendments to the U.S. Constitution;

13 b. Injunctive relief against further Constitutional violations as described herein;

14 c. Attorney's fees and costs of suit pursuant to 42 U.S.C. § 1988 and 28 U.S.C. §  
15 1920;

16 d. Pecuniary relief for damages caused;

17 e. Any such other and further relief as this Court may deem appropriate and  
18 equitable, including declaratory relief as may be required in the interests of justice.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

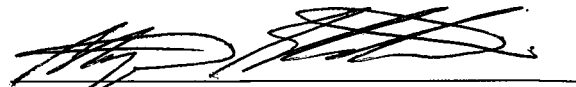
27 ///

VII. JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

DATED this 13 day of June 2018.

STEPHEN P. STUBBS, ATTORNEY AT LAW

A handwritten signature in black ink, appearing to read 'Stephen P. Stubbs', is written over a horizontal line.

STEPHEN P. STUBBS, ESQ.

Nevada Bar No.: 0010449

626 South Third Street

Las Vegas, Nevada 89101

*Attorney for Plaintiff*

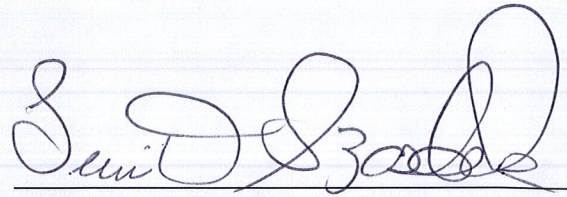


**CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the foregoing FIRST AMENDED COMPLAINT  
via the CM/ECF system to the following:

Lyssa S. Anderson  
Ryan W. Daniels  
Kaempfer Crowell  
1980 Festival Plaza Drive, Suite 650  
Las Vegas, Nevada 89135  
[landerson@kcnvlaw.com](mailto:landerson@kcnvlaw.com)  
[rdaniels@kcnvlaw.com](mailto:rdaniels@kcnvlaw.com)

DATED this 13 day of June 2018.

A handwritten signature in blue ink, appearing to read "S. D. S. 3000", is written over a horizontal line.

An Employee of Clear Counsel Law Group